872

SUPREME COURT OF THE UNITED STATES.

No. 88.

THOMAS ARMSTRONG AND AL, PLAINTIFFS IN ERROR,

vs.

THE TREASURER OF ATHENS COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

INDEX.

	Original.	Print.
Bill of complaint - - - - -	1	3
Subpœna - - - - - -	3	5
Return—answer—replication - - - -	3	5, 6
Decree—appeal—decree in bank - - -	4	6
Clerk's certificate - - - - -	4	7
Certificate of chief judge - - - -	5	7
Decree, and certificate of clerk - - - -	6	8
Allowance of writ of error - - - -	7	9
Writ of error - - - - -	8	9
Citation and service - - - - -	9	9, 10

S. D. Langtree, Print.

Proceedings in chancery, before the Supreme Court of the State of Ohio, in Bank, at the December Term, A. D. 1840, in a certain cause, reserved from the County of Athens, wherein Thomas Armstrong and others were Complainants, and the Treasurer of said Athens County, Defendant.

Bill.

Be it remembered, that heretofore, to wit, on the fourth day of August, A. D. 1840, Thomas Armstrong, John Gray, Ziba Lindley, Ziba Lindley, Jr., William Russell, (assignee of Almus Lindley), and Peter Vorhes, filed in the office of the clerk of the court of common pleas of Athens county, in the State of Ohio, a certain bill in chancery, in the words and figures following, to wit:

To the Court of Common Pleas of the County of Athens, State of Ohio, In chancery sitting:

Your orators, Thomas Armstrong, John Gray, Ziba Lindley, Ziba Lindley, Jr., William Russel, (assignee of Almus Lindley), and Peter Vorhes, of said county, complaining, represent, that they are respectively seized in fee, of the following described lots or tracts of land, in Alexander township, in said Athens county, under deeds executed to them by the president and trustees of the Ohio University, in pursuance of the provisions of the act of the general assembly of the State of Ohio, entitled: "An act authorizing the trustees of the Ohio University to dispose of certain lands," passed February 4, 1826, viz: The said Thomas Armstrong of 174 86-100 acres, lot No. 5, sections No. 29 and 30, town 8, range 14; the said John Gray of 84 acres, lot No. 1, section 34, and 80 acres, lot No. 3, section 35, in the town and range aforesaid; the said Ziba Lindley of 108 25-100 acres, lot No. 2, section 34, and 149 82-100 acres, lot No. section 35, town and range aforesaid; the said Ziba Lindley, Jr., of 200 66-100 acres, lots No. 2 and 4, sections 29 and 30, town and range aforesaid; the said Wm. Russel, assignee of Almus Lindley, of 158 34-100 acres, lot No. 4, section 17, town and range aforesaid; and the said Peter Vorhes of 210 75-100 acres, lot No. 2, section 34, town and range aforesaid: That the said lands are situated within the two townships granted by Congress, within the bounds of the Ohio

Company's purchase, for the endowment of a University; that by the 17th section of the act of the general assembly of the State of Ohio, passed February 18, 1804, entitled: "An act establishing an University in the town of Athens," it is declared, "that the lands in the two townships aforesaid, with the buildings which are or may be erected thereon, shall forever be exempted from all state taxes." That your orators purchased said several lots or parcels of land, and obtained deeds for the same from the said president and trustees of the Ohio University in full faith and confidence, that the same would forever remain free and exempt from all taxes for state purposes. Your orators further represent, that notwithstanding the declaration contained in said 17th section of the said last recited act, in pursuance of the provisions of an act of said general assembly, passed on the 21st day of March, 1840, (Local Laws, vol. XXXVIII, page 183), entitled "An act to amend the act authorizing the trustees of the Ohio University to dispose of certain lands, passed February 4, 1826," the said several tracts of land belonging to your orators, have been appraised by the assessor of said Athens county, and placed upon the duplicate for taxation, by the auditor of said county, and taxes for state, county and other purposes, amounting upon the land aforesaid of the said Thomos Armstrong to the sum of $5, 74, 2; of the said John Gray to $4, 51, —; of the said Ziba Lindley to $7, 08, 4; of the said Ziba Lindley, Jr., to $6, 60, —; of the said William Russel, assignee of Almus Lindley to $5, 21, 4, and of the said Peter Vorhes to $5, 76, 4, and amounting upon said tracts together to the sum of $34, 71, 4, have been assessed. That said tax duplicate has been placed in the hands of Amos Crippen, as treasurer of said county, (and who is prayed to be made defendant to this bill), for collection; and that the said treasurer has called upon orators, by public notice, for the payment of said taxes so assessed, and threatens to enforce the collection thereof in pursuance of the provisions of said last recited act, unles restrained there from by the authority of this court. Your orators therefore pray that the writ of subpœna may be issued against the said defendant; that he may be compelled to answer all and singular the said matters herein set forth; that the said defendant be enjoined from further proceeding in the collection of said taxes until the final decision of this cause, and that on the final hearing hereof, said injunction be made perpetual, and that your orators may have such further and other relief as the case may require, and to equity pertains,

J. EWING and A. G. BROWN,
Sols. for Comp'ts.

Affidavit

"Elmer Armstrong makes oath and says, that the several matters set fort in the foregoing bill, as therein stated, are true to the best of his knowledge and belief.

ELMER ARMSTRONG."

Sworn and subscribed in open court this 4th day of August, 1840.

J. DANA, *Clerk.*

Subpœna.

And therefore the following subpœna was issued out of the clerk's office of said court, to wit:

THE STATE OF OHIO,
Athens County, ss.

To the Sheriff of said County, greeting:

We command you, that you summon Amos Crippen, treasurer of Athens county, to appear forthwith before our court of common pleas, of the county of Athens, at their July term, 1840, to answer a plea in chancery, exhibited against him by Thomas Armstrong, Ziba Lindley, Ziba Lindley, Jr., John Gray, William Russel and Peter Vorhes, and this he shall in no wise omit under the penalty of one thousand dollars, and have you then there this writ.

Witness, Joseph Dana, clerk of our said court, at the said courthouse, this 4th day of August, A. D. 1840.

Attest, JOSEPH DANA, [L. S.]
Clerk.

Return.

Afterwards, to wit: on the said 4th day of August A. D. 1840, the said writ of subpœna, was returned into court, endorsed as follows, to wit:

"Service accepted, WILLIAM WALL, *D. T. A. C.*
For AMOS CRIPPEN"

And afterwards to wit: At said July term 1840, this cause was continued.

And afterwards to wit: On the 23rd day of October, A. D. 1840, the said defendant filed in the office of said clerk, his answer to the said bill, in the words and figures following, to wit:

Answer.

"The answer of Amos Crippen, Treasurer of Athen County, Defendant to the Bill of the said Complainants.

The said defendant now comes, and for answer to the bill of the said complainants says, that he admits all the things stated by the said complainants bill to be true in fact and he especially admits, that he does intend and will collect the taxes therein named, as he has right to do, by virtue of an act of the General Assembly of

Ohio, passed March 21, 1840 (Local Laws of Ohio vol. 38, page 183) in connection with other general laws of Ohio defining the duties of treasurer, &c., which local act and other public acts referred to, this defendant sets up as his defence to the said complainants bill. And the said defendant denies all fraud &c. and prays hence to be dismissed with his costs, by

WILLIAM WALL, *his Att'y*"

Replication.

And afterwards, to wit: On the said 23rd day of October 1840, the said complainants filed in the office of the clerk aforesaid a replication to said answer, in the words following, to wit:

"And the said complainants come and say, that the matters and things set forth in their said bill of complaint, are true in substance and in matter of fact, and that the matters and things set forth in the answer of the said Amos Crippen, treasurer &c. contrary thereto, are untrue, and this they are rendy to make appear, as by this court shall be directed, by

ERWIN and BROWN, *their Sol'rs*"

And afterwards, to wit, at the October term of said court, holden in and for said county on the 19th day of October, 1840.

Decree.

"This cause come on to be heard upon the bill, answer and replication; on consideration whereof, it was ordered and decreed, that the injnnction granted in this cause be perpetuated."

Appeal.

From which decree the defendant thereupon entered a notice of appeal to the Supreme Court.

Afterwards, to wit, at the November term of the supreme court of the State of Ohio, held in and for the county of Athens aforesaid, on the 23th day of November, A. D. 1840, this cause was reserved for decision in the court in bank."

COURT IN BANK,
December Term A. D. 1840.

ARMSTRONG and others,
vs.
TREASURER OF ATHENS COUNTY. } Reserved from the County of Athens.

Decree in Bank.

This cause came on to be heard upon the bill, answer, &c., and was argued by counsel, on consideration whereof the court find, that the law in equity of the case is with the defendant. It is therefore ordered and decreed by the court, that the bill be

dismissed with costs. And it is further ordered, that the complainants pay the costs herein, in sixty days, and in default thereof that execution issue therefor. Ordered, that a special mandate be sent to the court of common pleas of Athens county to carry this decree into execution. Ordered that a copy of this entry be certified to the clerk of the supreme court of Athens county for entry, &c.

THE STATE OF OHIO, *ss.*

I, Lyne Starling, Jr., Clerk of the supreme court in Bank of the State of Ohio, certify that the foregoing entry is truly and correctly copied and taken from the journal of the proceedings of said court on file in my office.

[L. S.] Witness my hand and the seal of said court at Columbus, this 30th day of December, A. D. 1840.

LYNE STARLING, JR., *Clerk.*

THE STATE OF OHIO,
Athens County, ss.

I, Henry Bartlett, Clerk of the supreme court of the State of Ohio for the county of Athens, do certify the above and foregoing to be a true and correct copy of the record of the cause aforesaid.

[L. S.] Attest my hand and official seal at Athens this twenty-eighth day of January A. D. one thousand eight hundred and forty-one.

HENRY BARTLETT, *Clerk.*

THOMAS ARMSTRONG, and others, Complainants,
vs.
AMOS CRIPPIN, Treasurer of Athens County. } In chancery.

Lately pending in the supreme court of the State of Ohio for Athens county and then reserved for decision in the conrt in bank.

I do hereby certify, that in the above named case there was drawn in question the validity of the statute of the State of Ohio, passed on the 21st day of March 1840, entitled "An act to amend the act, authorizing the trustees of the Ohio University to dispose of certain lands, passed July 4, 1836," on the ground, that it was repugnant to the Constitution of the United States, and that the decision of the court was in favor of the validity of said statute.

EBEN. LANE,
Chief Judge of the Supreme Court of Ohio.

Copy of entry.

Court in Bank, December Term, A. D. 1840.

ARMSTRONG and others,
vs.
TREASURER OF ATHENS COUNTY.

Reserved from the County of Athens.

This cause came on to be heard upon the bill, answers &c., and was argued by counsel, on consideration whereof, the court find that the law and equity of the case is with the defendant. It is therefore ordered and decreed by the court that the bill be dismissed with costs. And it is further ordered, that the complainants pay the costs herein in sixty days, and in default thereof, that execution issue therefore.

Ordered, that a special mandate be sent to the court of common pleas to carry this decree into execution.

Ordered, that a copy of this entry be certified to the clerk of the Supreme Court of Athens county for entry &c.

THE STATE OF OHIO, *ss.*

I, Lyne Starling jr., Clerk of the Supreme Court in Bank of the State of Ohio certify, that the foregoing entry is truly and correctly taken, and copied from the journal of the proceedings of said court on file in my office.

Witness my hand and the seal of said court at Columbus
[L. S.] this 30th day of December, A. D. 1840.

L. STARLING, Jr.
Clerk.

I allow a writ of error and supercedeas in the within case. The clerk of the circuit court will issue these writs as the law authorises.

JOHN McLEAN,
Justice Sup. Court U. States, 7th Circuit.

WM. MINOR,
Clerk.

Fees $200 paid, T. Ewing, Esq.

L. STARLING,
Clerk.

The United States of America.

To the honorable the Judges of the Supreme Court of the State of Ohio, greeting:

Whereas, in the record and process, and also in the rendering a

decree in a certain suit in chancery, which was in the said court, between Armstrong and others plaintiffs, and the Treasurer of Athens county defendant, manifest error hath intervened as it is said to the great damage of the said Armstrong and others, as by their complaint we are informed, and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court; so that the judgment aforesaid being inspected, the court may further for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the Honorable Roger B. Taney, Chief Justice of the United States of America, this first day of January, in the year of our Lord one thousand eight hundred and forty-one and in the year of the American Independence.

[L. S.]

Attest Wm. MINER, *Clerk.*

I allow a writ of error, and superseding in the within case. The clerk of the circuit court will issue these writs as the law authorises.

JOHN McLEAN,
Justice Sup. Court U. States, 7th Circuit.

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To the Treasurer of Athens County, greeting:

Whereas, Armstrong and others have obtained the allowance of our writ of error to the Supreme Court of the State of Ohio in bank, directed to remove into the said Supreme Court, to be holden at the city of Washington, on the second Monday in the month of January instant, the record of a certain plaint, process, proceedings and decree in suit in chancery, wherein, you the said the Treasurer of Athens county, in that action lately recovered a decree for the dismissal of the bill and the costs of said suit, as by the said record in the said Supreme Court aforesaid, remaining appears, in which said record and proceedings, and also in the rendition of the decree thereupon, manifest error hath intervened, as by the said Armstrong and others we are informed, and our said writ of error granted, issued and allowed as aforesaid, for the purpose of correcting the errors aforesaid alledged, if any there be. You are, therefore, hereby commanded and cited, to be and appear before the Judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the second Monday in the month

of January instant, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the Honorable Roger B. Taney, Chief Justice of the United States of America, this first day of January, in the year of our Lord one thousand eight hundred and forty-one, and in the sixty-fifth year of the American Independence.

[L. S.]

Attest JOHN McLEAN,
Justice Sup. Court U. States, 7th Circuit.

I acknowledge service of notice in behalf of the defendant in error.

WM. WALL,
Atty. for Deft.

877

SUPREME COURT OF THE UNITED STATES.

No. ~~38~~ 53.

ZENAS K. FULTON, JOHN W. ROBB, & EDWARD P. JOHNSON, & AL.
PLAINTIFFS IN ERROR,

vs.

MORGAN MCAFEE.

IN ERROR TO THE HIGH COURT OF ERRORS AND APPEALS OF THE STATE OF MISSISSIPPI.

INDEX.

	Original.	Print.
Citation	1	3
Service of citation	2	3
Petition for writ of error	3	3
Order to issue writ	4	4
Writ of error	5	4
Bond for prosecuting writ of error	7	5
Transcript of record from circuit court	10	6
Assignment of errors	34	21
Proceedings in high court of errors and appeals	35	22
Clerk's certificate	36	23

S. D. Langtree, Print.

UNITED STATES OF AMERICA, ss.

To Morgan McAfee, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error, filed in the clerk's office of the supreme court of errors and appeals of the State of Mississippi, wherein John W. Robb, Edward P. Johnson and Zenas K. Fulton and others, are plaintiffs, and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable William L. Sharkey, chief justice of the State of Mississippi, this nineteenth day of December, [L. S.] in the year of our Lord one thousand eight hundred and forty, and in the sixty-fifth year of the Independence of the United States.

W. L. SHARKEY,
Chief Justice of the High Court of Errors and Appeals of the State of Mississippi.

I acknowledge due service of the within notice, within the time prescribed by law.

S. S. PRENTISS,
Attorney for Morgan McAfee.

January 1, 1841.

To the Honorable William L. Sharkey, Chief Justice of the State of Mississippi.

The petition of Edward P. Johnson, John W. Robb and Zenas K. Fulton, respectfully shew, that a certain Morgan B. McAfee, at the March term of the Washington circuit court, in the year 1839, received a judgment in ejectment against your petitioners for certain lands in the said county of Washington, that by appeal said cause has been brought up to the high court of errors and appeals of the State of Mississippi, and by said court the judgment of the said Warren circuit court has been affirmed, all which will appear by the records of your honorable court. That in said cause divers questions arose under acts of the Congress of the United States and the construction thereof, which questions have been decided against your petitioners. They therefore pray a writ of error to the Supreme Court of the United States, that the errors in said case may

be corrected (if any there be) and alledge, that in the decision of each and every question involving the construction of acts of Congress there is error to their prejudice.

Your petitioners as in duty bound will ever pray, &c.

E. P. JOHNSON,
J. W. ROBB.
Z. K. FULTON.

To the clerk of the circuit court of the United States for the district of Mississippi, let a writ of error issue as prayed for, to operate as a supercedeas on the petition, on the petitioners filing bond in the sum of two thousand dollars, with Daniel Mayrs, as surety.

Given under my hand and seal, the 19th December, 1840.

W. L. SHARKEY, [L. S.]
Chief Justice of the High Court of Errors and Appeals of the State of Mississippi.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Judges of the High Court of Errors and Appeals of the State of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said high court of errors and appeals, before you, or some of you, between Zenas K. Fulton, John W. Robb and Edward P. Johnson, et al. (appellants) and Morgan McAfee, (appellee,) a manifest error hath happened, to the great damage of the said Zenas K. Fulton, John W. Robb and Edward P. Johnson, et al. as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday of January, in the [L. S.] year of our Lord one thousand eight hundred and forty, and of the Independence of the United States, the sixty-fourth.

WM. BURNS,
Clerk Circuit Court U. S. Sou. Dist. of Miss.

Issued December 23, A. D. 1840.

UNITED STATES OF AMERICA,
Southern District of Mississippi, sct.

Know all men, by these presents, that we, Edward P. Johnson, Jno. W. Robb, Zenas K. Fulton, and Geo. Downing, and Wm. Bain, and Daniel Mayes, are held and firmly bound unto Morgan McAfee, in the just and full sum of three thousand dollars, lawful money of the United States, to be paid to the said Morgan McAfee, his lawful attorney, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated the 19th day of December, A. D. one thonsand eight hundred and forty.

The condition of this obligation is such, That whereas at a term of the high court of errors and appeals of the State of Mississippi, commenced and held at the city of Jackson, on the first Monday of July, A. D. 1840, a judgment was rendered by said court in favor of the said Morgan McAfee against the said Edward P. Johnson, John W. Robb, Zenas K. Fulton, William Bain, and George Downing, that he recover of them his term yet to come, in and to lots seven and eight of sect. No. 3, sect. No. 4, and lots No. 1, 2, 3, 4, 5, 6, in section No. 5, township No. 16, of range No. 8, W. of the district of land subject to sale at Mount Salust, said land lying in Washington county, Mississippi, and cost of suit; and the said Edward P. Johnson, John W. Robb, Z. K. Fulton, William Bain, and George Downing, have sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said plaintiffs in error shall prosecute their said writ of error to effect, and shall well and truly pay aud satisfy the amount of said judgment, and all such damages, interest and costs as the said Supreme Court of the United States shall adjudge in the premises, if they the said plaintiffs in error shall fail to make their plea good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

Signed, EDWARD P. JOHNSON. [L. S.]
By W. MAYES, *his Attorney in fact.*
DANL. MAYES. [L. S.]

Sealed and delivered in presence of.

STATE OF MISSISSIPPI, *High Court of Errors and Appeals.*

I, Robert A. Patrick, clerk of said court, do hereby certify that the above and foregoing pages contain a true copy of the original bond for writ of error filed in this office, in the case of Richard Roe and Zenas K. Fulton et al. vs. John Doe, on demise of Morgan McAfee.

Given under my hand and seal of office, this 25th day of [L. S.] January, A. D. 1841.

R. A. PATRICK, *Clerk.*
By F. G. HOPKINSON, *D. C.*

STATE OF MISSISSIPPI, *High Court of Errors and Appeals, July Term, A. D.* 1840.

Richard Roe, Zenas K. Fulton et al. *vs.* John Doe, on demise of Morgan McAfee. } On an Appeal from the Circuit Court of Washington County.

Pleas and proceedings before the honorable high court of errors and appeals of the State of Mississippi, at a regular term of said court, began and held at the court room in the town of Jackson, on the first Monday of July, in the year of our Lord one thousand eight hundred and forty.

Present: Judges Sharkey, Trotter, and Turner.

Be it remembered that heretofore, to wit, on the 25th day of November, A. D. 1839, the clerk of the circuit court of Washington county filed in the clerk's office of this court, a transcript of the record and proceedings in the above stated case; which transcript is in the following words and figures, to wit:

Pleas before the honorable George Coalter, judge of the first judicial district of the State of Mississippi, at a circuit court, began and held in and for the county of Washington, on the 25th day of March, it being the 4th Monday of said month, in the year of our Lord 1839.

John Doe, on demise of Morgan McAfee *vs.* Richard Roe, Zenas K. Fulton, John Robb, Edward P. Johnson and others. } Ejectment.

Be it remembered that heretofore, to wit, on the 29th day of December, 1836, John Doe, on demise of Morgan McAfee, by attorney, filed in the clerk's office of the circuit court of Washington county, his declaration and notice in the above stated case, in the words and figures following, to wit:

STATE OF MISSISSIPPI, *Washington County, Circuit Court of said County, March Term*, 1839.

John Doe complains of Richard Roe, in custody, &c., of a plea of trespass and ejectment; for that whereas Morgan McAfee, heretofore, to wit, on the 19th day of August, eighteen hundred and thirty-four, at , in the county of Washington aforesaid, demised with said John Doe, a certain messuage and lot or tract of land, being lot seven and eight of section No. three, section No. four, and lots one, two, three, four, five, and six, of section No. four, in township No. sixteen, of range No. eight west, in the district of land subject to sale at Mount Salus: containing together thirteen hundred and twenty-three acres and thirty-one hundredths

of an acre, with the appurtenances, situate and being in the said county of Washington: To have and to hold the same to the said John Doe and his assigns, from the said nineteenth day of August, in the year afor, and during and unto the full end and time of twenty years from thence next ensuing, and fully to be complete and ended; and, also, that whereas Morgan McAfee, heretofore, on the eighteenth day of August, in the year 1834, in the said county of Washington, had demised to the said John Doe, a certain other messuage or lot of land, situate and being in the county of Washington, being lots seven and eight of section No. three, section No. four, and lots one, two, three, four, five, and six, of section No. five, in township No. sixteen, of range No. eight west, in the district of lands subject to sale at Mount Salus: containing thirteen hundred and twenty-three acres and thirty-one hundredths of an acre, with the appurtenances: To have and to hold the same to the said John Doe and his assigns, from the said eighteenth day of August, eighteen hundred and thirty-four, for and during the full end and time of twenty years, from thence next ensuing, to fully complete and end. By virtue of which several demises, the said John Doe entered into the messuage and sale of land aforesaid, with the appurtenances; and was possessed thereof for the said terms so to him granted, and the said John Doe being so thereof possessed; the said Richard Roe afterwards, to wit, on the twentieth day of August, in the year of our Lord eighteen hundred and thirty-four, with force and arms entered into the said messuage and lots, with the appurtenances, in which the said John Doe was so interested in manner and for the terms aforesaid; which terms have not, nor has either of them as yet expired, and ejected him, the said John Doe, from his said farms, and other wrongs to the said John Doe, then and there did, against the peace and dignity of the State of Mississippi, and to the damage of the said John Doe, five hundred dollars: Wherefore, he sues, &c.

GUION AND PRENTISS,
Attorneys for Plaintiffs.

To Mr. Zenas K. Fulton, John Robb, and William Bain, Edward P. Johnson, and George Downing, and each of them, take notice:

I am informed that you are in possession of, or claim title to the premises in the declaration mentioned, or to some portion of them, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of the next March term of the circuit court of Washington county, by some attorney of said court, and then and there by rule of court, cause yourself to be made defendant in my stead, otherwise I will suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Your loving Cousin,

December 21st, 1836. RICHARD ROE.

Endorsed as follows:

Received, March 12th, 1837.

W. F. JEFFERIES, *Sheriff.*

Executed by copy left at defendant's house, March 14th, 1837.

W. F. JEFFERIES, *Sheriff.*

And afterwards, to wit, at the March term of said court in the year 1837.

John Doe, on demise of Morgan McAfee,
vs.
Richard Roe. } Ejectment.

And now at this term comes Zenas K. Fulton, John Robb, Edward P. Johnson and George Downing, tenants in possession of the premises embraced in this action by Bucknor and Stewart, attornies of this court, and pray to be permitted to enter themselves defendants instead of the said Richard Roe. Whereupon it is ordered by the court that the said Fulton, Robb, Bain, Johnson and Downing, be permitted to enter themselves as defendants in lieu of the said Richard Roe, the casual ejector upon their entering into the consent rule, to confess on the trial lease, entry, and ouster, and to rely upon title only, or otherwise to permit judgment by default to go against the said Richard Roe. And now the said Fulton, Robb, Bain, Johnson and Downing, by their attorneys aforesaid, agree upon the trial to confess lease, entry and ouster, as laid in the declarations, and to rely upon the title only, and if they do not that they will permit judgment by default to be had against the said Richard Roe, and they hereby enter themselves as defendants in lieu of the said Richard Roe.

And afterwards, to wit, at the term last aforesaid, the defendants filed the following plea, to wit:

Ejectment in Washington Circuit Court, to March term 1837.

John Doe, on demise of Morgan McAfee,
vs.
Arthur Fulton *et al.*

And the said defendants come and defend the force and injury when, &c., and say they are not guilty of the said several trespasses in ejectment in manner and form as the plaintiffs in the said declaration have alledged, and of this they put themselves upon the country, &c.

BUCKNOR & STEWART, *for Defts.*

And the said plaintiffs doth the like.

S. S. PRENTISS, *P. Q.*

And afterwards, to wit, at the December term of said court in the year 1837.

Morgan McAfee *vs.* Fulton & Arthur. } Ejectment; Washington circuit court.

It is agreed by the parties to the above cause by their attornies that it shall stand continued to the next term of court. December 24th, 1838.

HEWITT & CARSON, *for Deft.*
HARRISON & HOLT, *for Pl'ffs.*

And at the term last aforesaid, John Doe, on demise of Morgan McAfee, *vs.* Richard Roe, i. e. Zenas K. Fulton, continued an affidavit of defendant and at their costs.

And afterwards, to wit, at the March term of said court in the year 1838. The said defendants filed the following affidavits, to wit:

Morgan McAfee *vs.* Z. K. Fulton *et al.* } Ejectment in the Washington circuit court, March term, 1838.

Zenas K. Fulton, one of the defendants in the above cause being duly sworn, says, that there are certain papers and public documents in the office of the register of the land office at Jackson, which are so important to the defendants that they cannot safely go to trial without copies of them, he expects to prove by said documents that the preemptors under whom the defendants claim, were in attendance before the laying of the cottage float and tendered the money for the land in controversy; that the person who laid the cottage float was then and there informed of the claim of the preemptors, and that said preemptors had filed their claim and made proof of the settlement right, in conformity with the act of Congress. The affiiant further states that M. Sunrall was the register of public lands at the time of the laying of the cottage float, and has full knowledge of all of the facts, and had until a few days since, charge of the register office at Jackson, where all of the proofs of the tender of money and the appropriation of the preemptors was made. That said Sumrall made at the time a record of all of said facts which are stated in full on the records and papers in said office at Jackson, that Mr. I. W. Arthur sent to Jackson some days ago for the purpose of taking the testimony of Sumrall under commission as a public officer, but that said Sumrall has relinquished the office of receiver, and that said office is now closed, and that there is no possibility of procuring a copy of said papers. The affiant further states that he has forwarded to Washington the recitp s showing his title to said land and expected to be able to obtainthe patents to the land in controversy before this time, but that

said patents have not arrived, nor has the affiant now the possession of said receipts, and is not in possession of any of his title papers, nor can he at this time procure any evidence whatever of title. That he expects to be fully prepared for trial, and to obtain the documents aforesaid by the next term of the court and that this affidavit is not made for delay but to procure a fair trial of said cause.

Z. K. FULTON.

Sworn to and subscribed before me this twentieth day of March, A. D. 1838.

WM. S. PARDEN, *J. P.*

Morgan McAfee *vs.* Z. K. Fulton. } Ejectment in Washington circuit court at March term, 1838.

Isaac W. Arthur being sworn says that he went from Natchez to Jackson, to take the deposition of Mr. Sumrall, formerly the register of the land office at Jackson, but on his arrival at that place some days since Sumrall had resigned his office; that he was told no successor is appointed, and the land office aforesaid is closed, and that he could neither get into it nor obtain a copy from its records, that he is acquainted with the facts as set forth in the within affidavit of Mr. Fulton, and verily believes that said cause cannot be tried on its merits at ensuing term.

I. W. ARTHUR.

Sworn to and subscribed before me, this twentieth day of March, A. D. 1838.

WM. S. PARDEN, *J. P.*

Which is endorsed.

This suit may be continued as on affidavit of defendants and at their costs, March 20th, 1838.

S. S. PRENTISS, *P. Q.*
A. BUCKNER, *for Defendants.*

And afterwards to wit, at the December term of said court in the year 1836.

John Doe on Demise of Morgan McAfee, *vs.* Richard Roe, i. e. Zenas K. Fulton and others. } Continued.

And now at this term to wit, the term first above mentioned being the March term 1839.

John Doe on Demise of Morgan McAfee,
vs.
Richard Roe, i. e. ZenasK. Fulton, John Robb, William Bain, Edward P. Johnson, George Downing and Isaac W. Arthur.

This day came Mr. Arthur and confessed lease entry and ouster and prayed to be admitted as a defendant in this action, which was consented to by the parties.

Whereupon, it is considered by the court, that he be admitted as a defendant hereto, as also came the other parties hereto.

Whereupon, came a jury of good and lawful men, to wit: Jeffry James, Thomas M. Tucker, Parly Hill, Adam Sherley, Calvin Belohn, John H. Cooke, Evan W. Shally, Joseph Purris, Andrew Trimble, John Gliecks, James B. Jackson, and Samuel Turner. Who being duly sworn well and truly to try the issue joined between the parties upon their oaths do say. We of the jury find the issue joined for the plaintiff, and that the defendants are guilty of the trespass and ejectment in manner and form as set forth by the plaintiff, and assess the plaintiffs damages at one cent.

Whereupon, it is ordered and adjudged by the court, that the plaintiffs do recover of defendant his term unexpired of and in the lands, and tenements in his declaration described and set forth, and also the damages assessed by the jury together with the costs of suit in this behalf expended.

And afterwards to wit, at the same term came the parties, and thereupon the defendants moved the court for a new trial on the grounds to wit: The defendants move the court to set aside the verdict and arrest the judgment herein, and give them a new trial on the following grounds.

1st. The verdict and judgment are contrary to law.

2d. The verdict is contrary to the evidence and the law of the case.

3rd. The court erred to the prejudice of the defendants in refusing to permit them to introduce the evidence offered by them to shew, that said certificate of the plaintiff was obtained by fraud, and that their possession was *amicalle* to the title acquired by the plaintiff of their settlement.

4th. The court erred in overruling the motion of the defendants to reject the said certificate (A), read by the lessors of the plaintiffs as evidence before the jury.

COLEMAN HEWITT
and SAUNDERS,
for Defendants.

Which motion was opposed by the plaintiffs and the court sustained the objection and refused to grant a new trial to which opinion of the court the defendants then excepted, and thereupon

tendered their bill of exceptions, which was signed and sealed by the court and ordered to be recorded. Which is in the words and figures following, to wit:

STATE OF MISSISSIPPI, WASHINGTON COUNTY,
Washington Circuit Court, March Term, 1839.

John Doe, on the demise of Morgan McAfee,
vs.
Zenas K. Fulton, John Robb, and others. } In Ejectment.

Be it remembered, that on the trial of this cause, the plaintiffs offered in evidence, in support of their title of the lessor of the plaintiff, a certificate of entry made by said Morgan McAfee of the lands in controversy, bearing date the 18th day of August, in the year 1834, in the words and figures following:

(A.)

Land Office at Mount Salus, *State of Mississippi.*

It is hereby certified, that in pursuance of the fourth section of the act of Congress passed on the twentieth day of April, in the year one thousand eight hundred and thirty-two, entitled An act for the relief of Jefferson College, in the State of Mississippi, and in conformity with instructions from the Secretary of the Treasury, Morgan McAfee, of Tallahatche county, assignee of Jefferson College, having deposited and caused to be recorded, in this office, a deed of transfer passed under the corporate seal of said college, bearing date the eighteenth day of August in the year one thousand eight hundred and thirty-four, for the quantity of two sections containing twelve hundred and eighty acres, more or less, the said Morgan McAfee, assignee of Jefferson College hath this day entered or located at this office the following described land, viz:

Lots seven and eight of section number three, section number four, and lots one, two, three, four, five and six of section number five in township No. sixteen, of range No. eight, west, in the district of lands subject to sale at Mount Salus containing, to gether thirteen hundred and twenty-three acres and thirty-one hnndredths of an acre. Now therefore be it known, that in consideration of the premises and in conformity with the act of Congress above mentioned I do hereby certify, that the United States of America have given and granted and by these presents do give and grant unto the said Morgan McAfee, assignee of Jefferson College, and to his heirs the land above described to have and to hold the same together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging unto the said Morgan McAfee and his heirs and assignies forever.

Given under my hand at Mount Salus the eighteenth day of August in the year one thousand eight hundred and thirty-four.

F. L. SUMRALL,
Register of the Land-Office.

Which was then read subject to all legal exceptions at the same time the defendants gave notice, that in the progress of the trial they would offer evidence, that the said certificate was purchased fraudulently by the said McAfee, the lessor of the plaintiff also read the act of Congress, approved April 20th, 1832, entitled "An act for the relief of Jefferson College." It was admitted by the defendants, that Jefferson College had relinquished all the lands formerly held by it as required by the provision of the said act, they also admitted, that at the time of the service of the declaration and notice of ejectment herein, that defendants occupied and were in possession of the several lots and tracts of land in controversy this being all the evidence in the cause offered or adduced on the part of the plaintiffs. The defendants offered and read for the purpose of shewing, that no patent had ever issued by virtue of the said certificate (A) above recited, the following patents and grants from the United States, to wit: A patent to Alexander Lasley, bearing date the 27th day of September 1837, (Marked B).

Pre-emption certificate No. 18,090.

The United States of America to all whom these presents shall come, greeting:

Whereas, Alexander Lasley of Washington county, Mississippi, has deposited in the General Land Office of the United States a certificate of the register of the land office of Mount Salus, whereby it appears, that full payment has been made by the said Alexander Lasley according to the provisions of the act of Congress of the 24th of April 1820, entitled, An act making further provisions for the sale of the public lands, for the lots, mentioned one and two of section five in township sixteen of range eight west in the district of land subject to sale at Mount Salus, Mississippi, containing one hundred and sixty-one acres and eighty-six hundredths of an acre, according to the official plat of the survey of the said lands returned to the general land office by the surveyor general. Which said tract has been purchased by the said Alexander Lasley. Now know ye, that the United States of America in consideration of the premises and in conformity with the several acts of Congress in such case made and provided have given and granted and by these presents do give and grant unto the said Alexander Lasley and to his heirs the said tract above described, to have and to hold the same together with all the rights,

privileges, immunities and appurtenances, of whatever nature thereunto belonging unto the said Alexander Lasley.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the twenty-seventh day of September in the year of our [L. S.] Lord one thousand eight hundred and thirty-seven, and of the Independence of the United States the sixty-second.

By the President MARTIN VAN BUREN,
By A. VAN BUREN, *Secr'y.*
H. M. GARLAND,
Recorder of the General Land Office.

A patent to Hector Lasley and John Lasley, of the same date, in words and figures following, marked Exhibit (C.)

Pre-emption Certificate }
No. 18,089. }

The United States of America to all whom these presents shall come greeting:

Whereas, HectorLasley and John Lasley, of Washington county, Mississippi, have deposited in the General Land Office of the United States a certificate of the register of the land office at Mount Salus, whereby it appears that full payment has been made by the said Hector Lasley and John Lasley, according to the provisions of the act of Congress of the 24th of April, 1820, entitled An act making further provision for the sale of the public lands, for lots numbered three, four, five and six of section five, in township sixteen, of range eight, west, in the district of land subject to sale at Mount Salus, Mississippi, containing three hundred and seventy-one acres and thirty-four hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General, which tract has been purchased by the said Hector Lasley and John Lasley. Now know ye, that the United States of America, in consideration of the premises and by virtue of the act of Congress in such cases made and provided, have given and granted, and by these presents do give and grant unto the said Hector Lasley and John Lasley, and to their heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges and immunities of whatsoever nature thereunto belonging, unto the said Hector Lasley and John Lasley, and their heirs and assigns forever, as tenants in common, and not as joint tenants. In testimony whereof the said Martin Van Buren, President of the United States of America,

has caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-seventh day of September, in the year of our Lord one thousand eight hundred and thirty-seven, and of the Independence of the United States the sixty-second.

[L. S.]

By the President: MARTIN VAN BUREN.

By A. VAN BUREN, *Sec'y.*

H. M. GARLAND,

Recorder of the General Land Office.

A patent to Isaac W. Arthur and Zenas K. Fulton, assignees of Ezekial Black and A. J. Black, bearing date the 9th day of June, 1838, in words and figures following, marked Exhibit (D.)

Pre-emption Certificate }
No. 18,430. }

The United States of America to all whom these presants shall come greeting:

Whereas, Isaac W. Arthur and Zenas K. Fulton, assignees of Ezekial Black and Andrew J. Black, have deposited in the General Land Office of the United States a certificate of the register of the land office at Mount Salus, according to the provision of the act of Congress of the 24th of April, 1820, entitled An act making further provision for the sale of the public lands, for the lots numbered five, six, seven and eight of section four, in township sixteen, of range eight west, in the district of lands subject to sale at Mount Salus, Mississippi, containing three hundred and thirty six acres and twenty-six hundredths of an acre, according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Elijah Black and Andrew J. Black. Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Isaac W. Arthur and Zenas Fulton, and to their heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Isaac W. Arthur and Zenas K. Fulton, and to their and assigns forever, as tenants in common and not as joint tenants.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, this ninth day of June, in the year of our

Lord one thousand eight hundred and thirty-eight, and of
[L. S.] the Independence of the United States the sixty-second.
By the President: MARTIN VAN BUREN.
By A. VAN BUREN, *Sc'y.*
H. M. GARLAND,
Recorder of the General Land Office.

A patent to George Mooney, bearing date the 6th day of October, 1837, marked Exhibit (C,) in words and figures following:

Pre-emption Certificate }
No. 18,478. }

The United States of America to all whom these presents shall come greeting:

Whereas, George Mooney, of Washington county, Mississippi, has *has* deposited in the General Land Office of the United States a certificate of the register of the land office at Mount Salus, whereby it appears full payment has been made by the George Mooney, according to the provisions of the act of Congress of the 24th of April, 1820, entitled An act making further provisions for the sale of the public lands, of lots numbered three and four of section four, in township sixteen, of range eight west, in the district of lands subject to sale at Mount Salus, Mississippi, containing one hundred and sixty-seven acres and seventy-one hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said George Mooney. Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said George Mooney, and to his heirs, the said tract above described, to have and to hold the same, together with all and singular the rights, privileges and immunities of whatsoever nature thereunto belonging, unto the said George Mooney.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the sixth day of October, in the year of our Lord one thousand eight hundred and thirty-seven, and of the Independence of the United States the sixty-second.

By the President: MARTIN VAN BUREN.
By A. VAN BUREN, *Sec'y.*
H. M. GARLAND,
Recorder of the General Land Office.

Also a patent to Abraham Dehart of the same state, marked Exhibit (F) in the words and figures following:

Pre-emption Certificate, }
No. 18,746. }

The United States of America: To all whom these presents shall come, Greeting

Whereas Abraham Dehart, of Washington county, Mississippi, has deposited in the General Land Office of the United States, a certificate of the register of the Land office at Mount Salus, whereby it appears that full payment has been made by the said Abraham Dehart, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "an act making further provision for the sale of the public lands," for lots numbered seven and eight, of section three, in the township sixteen, of range eight, west, in the district of land subject to sale at Mount Salus, Mississippi, containing one hundred and sixty-eight acres and eighty-five hundreths of an acre, according to the official plat of the survey of the said lands, returned to the General Land office by the Surveyor General, which said tract has been purchased by the said Alexander Dehart: Now know ye that the United States of America, in consideration of the premises, have given and granted, and by these presents do give and grant unto the said Abraham Dehart and his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges and immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Abraham Dehart, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land office to be hereunto affixed. Given under my hand, at the city of Washington, the sixth day of October, in the year of our Lord, one thousand eight hundred and thirty seven, and of the Independence of the United States, the sixty-second.

By the President

MARTIN VAN BUREN, [L. S.]

By A. VAN BUREN,
Secretary.

H. M. GARLAND,
Recorder of the General Land Office.

And a patent to Henry M. Robinson, of the same date, in words and figures following, marked (G.)

Pre-emption Certificate, }
No. 18,747. }

The United States of America: To all whom these presents shall come, Greeting:

Whereas Henry W. Robinson, of Washington county, Mississippi, has deposited in the General Land office of the United States, a certificate of the register of the Land office at Mount Salus, whereby it appears that full payment has been made by the said Henry W. Robinson, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "an act making further provisions for the sale of the public lands," for lots number one and two, of section four, in township sixteen, of range eight, west in the district of land subject to sale at Mount Salus, Mississippi, containing one hundred and sixty-seven acres, and thirty-nine hundreths of an acre, according to the official plat of the survey of the said lands, returned to the General Land office by the Surveyor General, which said tract has been purchased by the said Henry W. Robinson: Now know ye, that the United States of America; in consideration of the premises, and in conformity with the several acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant unto the said Henry W. Robinson and to his heirs, the said tract above described: to have and to hold the same, together with all the privileges, immunities and appurtenances of whatsoever nature, thereunto belonging, unto the said Henry W. Robinson.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office, to be hereunto affixed. Given under my hand, at the city of Washington, on the sixth day of October, in the year of our Lord, one thousand eight hundred and thirty-seven, and of the independence of the United States, the sixty-second.

By the President

MARTIN VAN BUREN, [L. S.]

By A. VAN BUREN,
Secretary.

H. M. GARLAND,
Recorder of the General Land Office.

It was then admitted by the plaintiffs, that the said patent covered all the lands in controversy, and were tne same lands described in certificate (A) read by the plaintiffs; the defendants then offered to prove by Davis, Montgomery and other witnesses, that prior to the year 1832, and from thence onward to the 19th day of August, 1834 and afterwards, one Alexander Lasley, Hector Lasley, John Lasley, Ezekial Black, Andrew J. Black, George Mooney, Abraham Dehart and Henry W. Robinson, were seated

and severally settled on the lands in controversy in this suit, and that they severally, prior to the 18th day of August, 1834, claimed the benefit of the several acts of Congress, in such case made and provided, to enter and locate the lands so seated upon by them, within the time prescribed by law as pre-emptors and also, that the said Morgan McAfee, before he made his said entry, had notice in fact of their claim, and that on the 18th day of August, 1834, the said Alexander Lasley, John Lasley, Hector Lasley, Ezekiel Black, Andrew J. Black, George Mooney, Abraham Dehart and Henry W. Robinson, were personally present at Mount Salus, in the state of Mississippi, before the regisier of the land office at said place, there opposing the right of said McAfee to locate or enter said land on the ground that it was appropriated, and that they had a right to enter the same by virtue of the pre-emption laws then in force, particularly the act of Congress of 19th June, 1834, and also that they were then there with witness, to prove their settlements and improvements on said land, with money to enter and pay for the same, which they offered and insisted upon doing before the said McAfee obtained his said certificate, and had in the hearing and presence of said McAfee, demanded the right to do so of the Register of the Land office, at his office at Mount Salus, on the day of the rendering said certificate to said McAfee, and before the same was obtained, and also offered to prove that the defendants had acquired their possession of said land under the said Alexander Lasley, Hector Lasley, John Lasley, Ezekiel Black, Andrew J. Black, George Mooney, Abraham Dehart and Henry W. Robinson, after the claims had been allowed, and they had entered them under the pre-emption laws, and that they so held under them at the time of this institution of this suit, by purchase, to the admissibility of all which evidence, the plaintiff by his attorney objected, and the court sustained the objection and refused to permit the said evidence to go to the jury, on the ground that the said certificate (A) could not be impeached at law for fraud, and that entering into the common rule of the confession of lease entry and ouster, was in fact a waiver of any notice to quit. To which opinion of the Court, the defendants then excepted. The defendants then offered to introduce F. L. Sumrall, the acting register of the Land office on the 18th day of August, 1834, and for a considerable time thereafter, that the pre-emption claims of the said Alexander Lasley, Hector Lasley, John Lasley, Ezekiel Black, Andrew J. Black, George Mooney, Abraham Dehart and Henry W. Robinson, were allowed that they had payed therefor prior to the institution of this suit, on which the said patents read by the defendants had since issued, and that the commissioners of the General Land office had rejected the certificate (A,) and refused to issue a patent thereon, to the introduction of which evidence the plaintiffs objected, and the court sustained the objection, to which opinion of the court, the defendants then excepted. The defendants offered to produce parol testimony to prove that the said certificate

was procured by fraud by shewing that at the time of its being issued, that both the said Register and the said McAfee had notice of the claims of the said Lasley and others to the appropriation of the said land, under the pre-emption laws, and that the pre-emptors were then insisting upon making proof of their rights and to pay therefor, but the lessor of the plaintiffs opposed the introduction of such testimony for such purposes, and the court sustained the objection, to which opinion of the court, the defendants then excepted. This being all the evidence in this cause, the defendants then moved the court to exclude the said certificate as evidence of a legal title in the plaintiff, by which to maintain this action, which motion was opposed by the plaintiffs, and was refused by the court, to which opinion of the court, the defendants then excepted. The jury having retired and found their verdict herein, the defendants moved the court to set aside the verdict and judgment, and to grant a new trial on the following grounds: (which grounds see recorded page) which motion was opposed by the counsel of the plaintiffs, and was overruled by the court to which opinion of the court, the defendants then excepted, and they now pray this, their bill exceptions be signed, sealed and enrolled, which is allowed.

GEORGE COALTER, [L. S.]

The defendants then prayed an appeal to the high court of errors and appeals, which was granted by the court upon their entering into bond with Theodorick J. James, security in the penalty of five hundred dollars conditioned according to law, which bond was then executed and approved by the court in the words and figures following, to wit:

Know all men by these presents, that we, Zenas K. Fulton, John Robb, Edward P. Johnson, George Downing, Isaac W. Arthur, principals, and Theodorick J. James, security, severally and jointly acknowledge ourselves held and firmly bound, unto McAfee, in the penal sum of five hundred dollars lawful money of the United States, to the payment of which well and truly to be made unto the said Morgan McAfee, his heirs and assigns, we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, witness our hands and seals, this 28th day of March, 1839.

The condition of this obligation is such, that whereas John Doe, on the demise of the said Morgan McAfee, did at the present term of the circuit court of Washington county, in the State of Mississippi, recover a judgment in an action of ejectment, against the said Zenas K. Fulton, John Robb, Edward P. Johnson, George Downing, and Isaac W. Arthur, for certain lands and tenements therein described, together with the costs of suit, and final judgment having been rendered by the said court, and the defendants aforesaid feeling themselves aggrieved by the opinion of the said court in deciding matters of law determined in said suit, and in rendering

said judgment, and they having prayed an appeal to the high court of errors and appeals of the State of Mississippi, which hath been granted by the honorable the judge of the said circuit court upon their entering into bond payable to the said Morgan McAfee, with the said Theodorick J. James, as security, in the penalty of five hundred dollars, conditioned according to law; now should the said defendants together with the said James, pay to the said Morgan McAfee, all costs and damages awarded in case the said judgment shall be affirmed by said high court of errors and appeals, then this obligation to be null and no effect, otherwise to remain in full force and virtue.

Witness our hands and seals, the day and year above written.

ZENAS K. FULTON, [L. S.]
JOHN ROBB, [L. S.]
EDWARD P. JOHNSON, [L. S.]
GEORGE DOWNING, [L. S.]
ISSAC W. ARTHUR, [L. S.]
T. J. JAMES, [L. S.]

Attest: T. W. ENDICOTT, *Clerk.*

STATE OF MISSISSIPPI, *Washington County, ss.*

I, Thomas W. Endicott, clerk of the circuit court, in and for the county and State aforesaid, certify that the foregoing is a true copy of the record and proceedings in the cause therein mentioned.

Given under my hand and seal of office, at Princeton, this [L. S.] 28th day of April, A. D. 1839.

THOS. W. ENDICOTT, *Clerk.*
By M. ENDICOTT, *Dep. Clerk.*

Assignment of Errors.

STATE OF MISSISSIPPI, *High Court of Errors and Appeals.*
FALL TERM, 1839.

John Doe on demise of Morgan McAfee *ads.* } Appellees.
Richard Roe i. e. Zenas K. Fulton, John Robb, Edward P. Johnson et al. } Appellants.

Upon appeal from judgment of Washington Circuit Court.

The appellees, Zenas K. Fulton et al., by their attorney, say that in the record and proceedings in this case there is manifest error, to their great prejudice in this, to wit:

1st. The court erred in overruling the defendants' motion for a new trial.

2d. The court erred in refusing to permit the evidence offered by the defendants to go to the jury, and in excluding the same.

3d. The court erred in overruling the defendants' motion to exclude from the jury the certificate given in evidence by the lessor of the plaintiff.

4th. The court erred in each and every opinion and decision pronounced against the appellees, (defts. below); wherefore, and for other errors apparent on the record, the appellants pray that the judgment rendered against them be reversed, and held for naught, &c.

MAYES, *for Appellees.*

Proceedings in the High Court of Errors and Appeals, January Term, A. D. 1840, 16*th day of April.*

Richard Roe, i. e. Fulton, Robb et al.
vs.
John Doe, on dem. Morgan McAfee.

Cause opened, and argument commenced.

At the same term, 17th day of April:

Richard Roe, i. e. Fulton, Robb, et al.
vs.
John Doe on dem. Morgan McAfee.

Argument closed, and cause submitted.

And at the July term, A. D. 1840, 7th day of December.

Zenas K. Fulton, John Robb, Edmund P. Johnson, George Downing, Isaac W. Arthur, tenants in possession under Richard Roe,
vs.
John Doe, on demise of Morgan McAfee.

This cause having been argued and submitted at a former term of this court, and the same having been duly considered by the court, it is ordered and adjudged that the judgment of the circuit court of Washington county be, and the same is hereby, affirmed in all particulars.

Whereupon it is considered by the court, that the appellees do have and recover from the said appellants their term yet to come, in the following described lands, and the messuages and appurtenances thereunto belonging, to wit: Lots (7 and 8) seven and eight of section No. three (s. No. 3,) section number four (sec. No. 4,) and lots numbers one, two, three, four, five and six, (lots Nos. 1, 2, 3, 4, 5 and 6,) of section number five, (section No. 5,) in township number sixteen, (township 16,) of range number eight west, (range 8 west,) in the district of lands subject to sale at Mount Salus, containing in all thirteen hundred and twenty-three acres, and thirty-one hundreths, (1,323 31-100 acres.) It is further ordered by the

court, that the writ of *habeis facias possessionom* issue in favor of the appellees, from the circuit court of Washington county.

And it is further considered by the court, that the appellees do have and recover of the appellants principals, and T. J. James, securities in the appeal bond, his costs by him about this suit, in this behalf expended to be taxed, &c.

STATE OF MISSISSIPPI, *High Court of Errors and Appeals.*

I, Robert A. Patrick, clerk of said court do hereby certify, that the above and foregoing twenty-five pages contain a true and correct copy of the record, proceedings and judgment in the case of Richard Roe, i. e. Zenas K. Fulton, et al. vs. John Doe, on dem. of Morgan McAfee, as the same now remains on record in my office.

Given under my hand and seal of office, this 23d day of January, A. D. 1841.

[L. S.]

R. A. PATRICK, *Clerk.*

By F. G. HOPKINS, *Dep. Clerk.*